KHAIRY JAMALUDDIN v. DATO' SERI ANWAR IBRAHIM

COURT OF APPEAL, PUTRAJAYA
ABDUL AZIZ ABDUL RAHIM JCA
DAVID WONG DAK WAH JCA
ABANG ISKANDAR JCA
[CIVIL APPEAL NO: W-02-2341-10-2013]
20 AUGUST 2014

TORT: *Defamation – Defence – Defence of justification – Subsequent proposed amendment to defence – Lucas Box principle – Whether defendant pleaded meaning with clarity – Whether proposed amendments will be prejudicial to plaintiff – Whether proposed amendment complied with Lucas Box principle – Whether proposed amendments met requirements of O. 78 r. 3(2) of Rules of Court 2012 – Whether amendment justified – Defamation Act 1957, s. 8*

CIVIL PROCEDURE: *Pleadings – Defence – Amendment – Proposed amendment to defence in defamation case – Whether proposed amendments passed all legal requirements – Whether prejudicial to party against whom amendments to be made – Whether indicated lesser meaning attributed to impugned words – Whether defendant bona fide in pursuit of proposed amendments*

The respondent/plaintiff filed defamation action in respect of certain remarks made by the appellant/defendant during a political speech, in which the defendant uttered words which were allegedly defamatory of the plaintiff. The defendant admitted uttering the impugned words. Subsequently, the defendant filed his defence relying, *inter alia*, on the defences of justification, qualified privilege and estoppels. Thereafter, an order precluding the defendant from defending the action was made due to the defendant's failure to comply with an Unless Order made by the court during case management directions ('the Preclusion Order'). The defendant failed in his bid to set aside the Preclusion Order in the High Court but succeeded before the High Court. After all the preliminaries and pre-trial procedures had been completed and the case fixed for hearing, the defendant sought to amend his defence of justification to include a 'lessor/lower defamatory meaning' and a plea of 'partial justification'. The plaintiff opposed the defendant's proposed amendment to the defence, *inter alia*, on the reasons: (i) the defendant had failed to state the meaning he sought to justify in the proposed amendments; (ii) the purported particulars in paras. 11(i) to (v) of the proposed amended defence did not amount to facts which supported the allegation that the impugned words were true as required by O. 78 r. 3(2) of the Rules of Court 2012 ('ROC'); (iii) the proposed plea of partial justification in para. 12 of the proposed amended defence was wrong, improper and inapplicable as the words which the plaintiff complained of referred to only one charge and not several charges; and (iv) delay in making the application. The High Court dismissed the application and hence, this

A appeal. The issue in this appeal was whether the proposed amendments will be prejudicial to the plaintiff and whether the amendment to introduce the defence of partial justification had complied with the *Lucas Box* principle.

Held (dismissing appeal with costs)
Per Abdul Aziz Rahim JCA delivering the judgment of the court:

B

(1) The *Lucas Box* principle provides that in a defamation action, a defendant who does not agree with the meaning of the words about which the plaintiff makes of the impugned words, is entitled to give an alternative meaning and give particulars to justify that meaning. It is imperative that the meaning be pleaded with clarity so that a plaintiff knows what case he has to meet and the meaning which the defendant seeks to attribute to the words complained of. (para 29)

C

(2) The defendant was evasive and did not provide any clear answer when asked as to what meaning the defendant attributed to the impugned statement with regard to the character of standing of the plaintiff. The defendant had not ascribed in clear and precise terms the alternative meaning of the impugned statement that he imputed to the plaintiff other than the meaning understood by the plaintiff. The particulars which the defendant provided in paras. 11(i) to (v) of the proposed amended defence did not meet the requirements of O. 78 r. 3(2) of the ROC, which was fatal to the defendant. (paras 30, 32 & 33)

D

E

(3) The particulars pleaded in paras. 11(i) to (v) of the proposed amended defence were not statement of facts but a narrative of the defendant's view and opinions about the opposition parties of which the plaintiff was the *de facto* leader; the opposition parties were not parties to this appeal or the proceedings before the High Court. The words or statements complained of by the plaintiff in plain and ordinary meaning of the Malay language, as understood by ordinary and reasonable Malaysian, refer to only one act that was, in the context of which the words were said or uttered, the act of homosexuality. (paras 33 & 34)

F

G

(4) Whilst s. 8 of the Defamation Act 1957 ('the Act') allows the defendant to avail himself to the defence of justification if one of the charges, if not all the charges, is proven to be true, the claim by the plaintiff in this case was only related to one charge that was the plaintiff was said to be homosexual or possesses the propensity to indulge in such act. Section 8 of the Act speaks of more than one charge in an impugned statement. The statement in the present appeal did not allude to two or more different defamatory statements. Therefore, the defendant's argument that he could rely on s. 8 of the Act to justify the amendment of partial justification was misconceived. (para 34)

H

I

(5) Judgments which do not come within the ambit of ss. 40, 41 and 42 of the Evidence Act 1950 are irrelevant unless the existence of the judgments is in issue. The judgment of the Federal Court, in which the plaintiff was acquitted of a charge of sodomy, relied on by the defendant was not in issue. In this appeal, the issue was not about the guilt or otherwise of the plaintiff's involvement in the alleged homosexual activities; but whether or not the impugned words or statement were defamatory of the plaintiff. Although the Federal Court had made a finding of fact that there was evidence that the plaintiff was involved in homosexual activities, there is no presumption that a prior judgment is the correct decision on the matter; and that there is nothing in the Evidence Act 1950 to warrant the conclusion that the statements of finding of fact in another case can be used as evidence in a subsequent case to decide the points which are in issue in the subsequent case. (paras 35 & 36)

(6) Further, the Federal Court case was not between the same parties as in this appeal, not to say the least that the passage by the Federal Court referred to by the defendant was highly prejudicial to the plaintiff who was acquitted by the Federal Court on the charge. It was immaterial whether the plaintiff was subsequently convicted of another charge of sodomy which charge and conviction was found well after the defendant had made the impugned statement; and which charge and conviction was not in any way related to the first charge on which the plaintiff was acquitted by the Federal Court. (para 36)

(7) The court's discretion in allowing amendments to the pleadings must be exercised judicially. The court must be satisfied that the proposed amendments have passed all the legal requirements and are not prejudicial to the party against whom the amendments are to be made. In other words, the court must also consider the materiality and effectiveness of the amendments. The proposed amendments did not give any indication of what was the lesser meaning that was attributed to the impugned words or statement attributed to the plaintiff. Thus, the plaintiff was prejudiced and would be left groping for the meaning or meanings which the defendant sought to give to the impugned words in order to put up a response to the proposed amended defence when the words or statement complained of pointed only to one charge. (para 37)

(8) The defendant was given ample opportunity to amend the pleadings; but the defendant did nothing resulting in the court making an Unless Order to preclude the defendant from defending the case. In this regard, the argument that the amendments should be allowed on condition that the defendant pleaded the particulars that were lacking in the proposed amendments when the defendant eventually filed the amended defence was not tenable in the circumstances of this case. There was clear lack of *bona fide* in the pursuit of the proposed amendments by the defendant. (para 37)

A ***Bahasa Malaysia*** *Translation Of Headnotes*

Responden/plaintif memfailkan tindakan fitnah berkaitan komen tertentu yang dibuat oleh perayu/defendan semasa ceramah politik, di mana defendan menyebut perkataan-perkataan yang dikatakan memfitnah plaintif. Defendan mengaku menyebut perkataan-perkataan yang dipersoalkan. Kemudian, B defendan memfailkan pembelaannya bersandarkan, antara lain, atas pembelaan justifikasi, perlindungan bersyarat dan estoppel. Selepas itu, perintah menghalang defendan daripada membela tindakan tersebut dibuat disebabkan oleh kegagalan defendan mematuhi 'Unless Order' yang diberikan oleh mahkamah semasa arahan pengurusan kes ('Perintah C Halangan'). Defendan gagal dalam percubaannya untuk mengenepikan Perintah Halangan di Mahkamah Tinggi tetapi berjaya di Mahkamah Tinggi. Selepas kesemua prosedur awalan dan pra-perbicaraan telah diselesaikan dan kes ditetapkan untuk perbicaraan, defendan memohon untuk meminda pembelaan justifikasinya untuk memasukkan 'maksud fitnah yang kurang dan D rendah' dan pli 'justifikasi separa'. Plaintif menentang cadangan pindaan pembelaan, antara lain, atas alasan-alasan: (i) defendan telah gagal menyatakan maksud yang dipohonnya untuk menjustifikasi pindaan yang dicadangkan; (ii) butiran yang dikatakan dalam perenggan 11(i) hingga (v) cadangan pembelaan terpinda bukanlah fakta yang menyokong dakwaan E bahawa kata-kata yang dipersoalkan adalah benar seperti yang diperlukan oleh A. 78 k. 3(2) Kaedah-Kaedah Mahkamah 2012 ('KKM'); (iii) pli justifikasi separa yang dicadangkan dalam perenggan 12 cadangan pembelaan terpinda adalah salah, tidak wajar dan tidak terpakai kerana kata-kata yang diadukan oleh plaintif merujuk kepada satu pertuduhan sahaja dan bukan beberapa pertuduhan; dan (iv) kelewatan dan membuat permohonan. F Mahkamah Tinggi menolak permohonan tersebut dan oleh itu rayuan ini. Isu dalam rayuan ini adalah sama ada cadangan pindaan akan memprejudis kepada plaintif dan sama ada pindaan untuk memperkenalkan pembelaan justifikasi separa mematuhi prinsip *Lucas Box*.

G **Diputuskan (menolak rayuan dengan kos)**
Oleh Abdul Aziz Rahim HMR menyampaikan penghakiman mahkamah:

(1) Prinsip *Lucas Box* menyatakan bahawa dalam tindakan fitnah, seseorang defendan yang tidak bersetuju dengan maksud kata-kata yang dipersoalkan seperti yang difahami oleh plaintif berhak untuk H memberikan maksud alternatif dan memberikan butir-butir untuk menjustifikasi maksud tersebut. Adalah penting bahawa maksud tersebut diplidkan dengan jelas supaya plaintif mengetahui bahawa kes yang perlu dijawabnya dan maksud yang mana defendan memohon untuk berikan kepada kata-kata yang diadukan.

I

(2) Defendan bersifat mengelak dan tidak memberikan apa-apa jawapan yang jelas apabila disoal mengenai maksud yang diberikannya kepada kenyataan yang dipersoalkan berkaitan dengan peribadi plaintif. Defendan tidak mentafsirkan dalam terma yang jelas dan tepat maksud alternatif kenyataan yang dipersoalkan yang diberikannya kepada plaintif selain daripada maksud yang difahami oleh plaintif. Butir-butir yang diberikan oleh defendan dalam perenggan 11(i) hingga (v) cadangan pembelaan terpinda tidak memenuhi keperluan A. 78 k. 3(2) KKM, yang memudaratkan kepada defendan.

(3) Butir-butir yang diplidkan dalam perenggan 11(i) hingga (v) cadangan pembelaan terpinda bukan kenyataan fakta tetapi naratif pandangan dan pendapat defendan mengenai parti pembangkang yang mana plaintiff adalah pemimpin *de facto*; parti pembangkang bukanlah pihak kepada rayuan atau prosiding di Mahkamah Tinggi. Kata-kata atau kenyataan-kenyataan yang diadukan oleh plaintif dalam maksud biasa dan lazim dalam Bahasa Melayu, seperti yang difahami oleh masyarakat Malaysia yang biasa dan munasabah, merujuk kepada satu tindakan yang mana, dalam konteks di mana kata-kata tersebut dikatakan disebut, tindakan homoseksual.

(4) Walaupun s. 8 Akta Fitnah 1957 ('Akta') membenarkan defendan menggunakan pembelaan justifikasi jika salah satu pertuduhan, jika bukan kesemua pertuduhan, adalah terbukti benar, tuntutan oleh plaintif dalam kes ini hanya berkaitan satu pertuduhan, iaitu plaintif dikatakan homoseksual atau memiliki kecenderungan untuk bertindak sedemikian. Seksyen 8 Akta menyatakan mengenai lebih daripada satu pertuduhan dalam kenyataan yang dipersoalkan. Kenyataan dalam rayuan ini tidak bermaksud dua atau lebih kenyataan-kenyataan memfitnah yang berbeza. Oleh itu, hujahan defendan bahawa dia boleh bersandarkan s. 8 Akta untuk menjustifikasi pindaan justifikasi separa adalah salah tanggap.

(5) Penghakiman-penghakiman yang tidak terangkum dalam ss. 40, 41 dan 42 Akta Keterangan 1950 adalah tidak relevan kecuali kewujudan penghakiman-penghakiman tersebut menjadi isu. Penghakiman Mahkamah Persekutuan, di mana plaintif telah dibebaskan atas pertuduhan meliwat, yang disandarkan oleh defendan bukan isu. Dalam rayuan ini, isunya bukan mengenai kesalahan atau sebaliknya bagi penglibatan plaintif dalam aktiviti homoseksual yang didakwa; tetapi sama ada atau tidak kata-kata atau kenyataan yang dipersoalkan memfitnah plaintif. Walaupun Mahkamah Persekutuan membuat dapatan fakta bahawa terdapat keterangan bahawa plaintif terlibat dalam aktiviti homoseksual, tidak ada anggapan bahawa penghakiman terdahulu adalah keputusan yang betul bagi perkara tersebut; dan tidak ada apa-apa dalam Akta Keterangan 1950 yang mewajarkan kesimpulan

bahawa kenyataan-kenyataan dapatan fakta dalam kes lain boleh digunakan sebagai keterangan dalam kes kemudiannya untuk memutuskan perkara-perkara yang adalah isu dalam kes kemudiannya.

(6) Selanjutnya, kes Mahkamah Persekutuan bukan antara pihak-pihak yang sama dengan rayuan ini, dan perenggan Mahkamah Persekutuan yang dirujuk oleh defendan adalah amat memprejudiskan plaintif yang telah dibebaskan oleh Mahkamah Persekutuan atas pertuduhan tersebut. Tidak penting sama ada plaintif telah kemudiannya disabitkan atas satu lagi pertuduhan liwat dan sabitan telah dibuat selepas defendan membuat kenyataan yang dipersoalkan tersebut; dan pertuduhan dan sabitan tersebut tidak, dalam apa cara pun, berkait dengan pertuduhan pertama di mana plaintif dibebaskan oleh Mahkamah Persekutuan.

(7) Budi bicara mahkamah dalam membenarkan pindaan kepada pliding perlu dilaksanakan secara kehakiman. Mahkamah perlu berpuas hati bahawa cadangan pindaan telah melepasi kesemua keperluan undang-undang dan tidak memprejudiskan pihak yang terhadapnya pindaan akan dibuat. Dalam kata lain, mahkamah perlu mempertimbangkan kepentingan dan keberkesanan pindaan-pindaan tersebut. Pindaan yang dicadangkan tidak memberikan apa-apa indikasi mengenai apakah maksud yang lebih ringan yang telah diberikan kepada plaintif. Oleh itu, plaintif telah diprejudiskan dan akan dibiarkan tercari-cari maksud atau maksud-maksud yang defendan ingin berikan kepada kata-kata yang dipersoalkan tersebut untuk memberikan jawapan kepada cadangan pembelaan terpinda apabila kata-kata atau kenyataan yang diadukan menjurus kepada satu pertuduhan sahaja.

(8) Defendan telah diberikan peluang yang banyak untuk meminda plidingnya; tetapi defendan tidak berbuat apa-apa yang mengakibatkan mahkamah membuat 'Unless Order' untuk menghalang defendan daripada membela kesnya. Berkaitan dengan ini hujahan bahawa pindaan-pindaan wajar dibenarkan dengan syarat bahawa defendan memplidkan butiran yang tiada pindaan yang dicadangkan apabila defendan kemudiannya memfailkan pembelaan terpinda tidak boleh dipertahankan dalam keadaan kes ini. Defendan jelas tidak *bona fide* dalam meneruskan dengan pindaan yang dicadangkan.

Case(s) referred to:

Dato' Seri Anwar Ibrahim v. Abdul Khalid @ Khalid Jafri Bakar Shah & Anor (W-02-741-2000) (Unreported) ***(refd)***

Dato' Seri Anwar Ibrahim v. PP & Another Appeal [2004] 3 CLJ 737 FC ***(refd)***

DP Vijandran v. Karpal Singh & Ors [2000] [2000] 6 CLJ 433 HC ***(refd)***

Elaine Chase v. News Group Newspapers Ltd [2002] EWCA Civ 1772 ***(refd)***

HSBC Bank Malaysia Bhd v. Macquarie Technologies (Malaysia) Sdn Bhd & Another Appeal [2004] 3 CLJ 121 CA ***(refd)***

Jusoh v. Ng Ah Sooi & Anor [1963] 1 LNS 49 HC ***(refd)***

Lee Kuan Yew v. Chin Vui Khen & Anor [1989] 1 LNS 190 HC ***(refd)***

Lucas-Box v. News Group Newspapers Ltd [1986] 1 All ER 177 ***(foll)***
Mirzan Mahathir v. Star Papyrus Sdn Bhd [2000] 5 CLJ 507 HC ***(refd)***
Morrell v. International Thomson Publishing [1989] 3 All ER 733 ***(refd)***
Ong Tua Chor v. Lee Beng Tong [1975] 1 LNS 116 HC ***(refd)***
Polly Peck (Holdings) PLC & Others v. Trelford & Others [1986] 2 All ER 84 ***(refd)***
Ponnusamy & Anor v. Nathu Ram [1959] 1 LNS 73 HC ***(refd)***
PP v. Dato' Seri Anwar Ibrahim [2014] 1 CLJ 354 CA ***(refd)***
Raphael Pura v. Insas Bhd & Anor [2000] 4 CLJ 830 CA ***(refd)***
She Eng Gek v. DA De Silva [1956] 1 LNS 113 HC ***(refd)***
Stadco Sdn Bhd v. Woolley Development Sdn Bhd [2013] 1 LNS 483 CA ***(refd)***
Stephen Foley & 2 Ors v. Lord Ashcroft KCMG [2012] EWCA Civ 423 ***(refd)***
Wright Norman & Anor v. Oversea-Chinese Banking Corp Ltd [1994] 1 SLR 513 ***(refd)***
Yamaha Motor Co Ltd v. Yamaha (M) Sdn Bhd & Ors [1983] 1 CLJ 191; [1983] CLJ (Rep) 428 FC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 24A, 67
Defamation Act 1957, s. 8
Evidence Act 1950, ss. 40, 41, 42, 43
Rules of Court 2012, O. 20 r. 5, O. 78 r. 3(2)

For the appellant/defendant - Muhammad Shafee Abdullah (Jeffrey John, Syed Ismat & Sarah Abishegam with him); M/s Shafee & Co
For the respondent/plaintiff - Leela J Jesuthasan; M/s Faiz & Co

[Editor's note: For the High Court judgment, please see Dato' Seri Anwar Ibrahim v. Khairy Jamaluddin [2014] 1 CLJ 499.]

Reported by S Barathi

JUDGMENT

Abdul Aziz Abdul Rahim JCA:

[1] On 7 March 2008, the plaintiff (the respondent in this appeal) filed this defamation action against the defendant (the appellant in this appeal) in respect of certain remarks made by the defendant during a political speech on 20 February 2008 at Lembah Pantai, Kuala Lumpur. During the speech, the defendant uttered the words "DAP main PAS dari kanan, PAS main DAP dari kiri, Anwar main dua-dua dari belakang", which the plaintiff contends is defamatory of him. The defendant has, through his lawyer's letter dated 6 March 2008 in response to the plaintiff's letter of demand, admitted uttering the impugned words.

[2] At the material time in February 2008, the plaintiff was the advisor to Parti Keadilan Rakyat Malaysia, and the defendant, the Deputy Youth Chief of the Youth Wing of UMNO.

[3] The defendant filed his defence on 21 October 2010 relying, *inter alia*, on the defences of justification, qualified privilege and estoppels.

[4] An order precluding the defendant from defending the action was made on 13 August 2012 due to the defendant's failure to comply with an unless order made by the court during case management directions ('the preclusion order'). The defendant failed in his bid to set aside the preclusion order in the High Court but succeeded before the Court of Appeal on 21 June 2013.

[5] All preliminaries and pre-trial procedures have been completed; and the case has been fixed for hearing for two days in November and two days in December 2013. In compliance with case management directions, the plaintiff has filed the bundle of pleadings, bundles of documents, statement of agreed facts, statement of issues to be tried, list of witnesses and case summary. Witness statements are due to be filed and exchanged on or before 14 November 2013.

[6] The defendant now, seeks to amend his defence of justification to include a "lesser/lower defamatory meaning" and a plea of "partial justification".

[7] The draft amended defence is exhibited to defendant's application. They read as follows:

> 11. Subject to and without prejudice to the matters pleaded in paragraph 10 above the defendant pleads that the impugned words carry a lesser/lower defamatory meaning which are as follows:
>
> (i) The defendant uttered the impugned words as an analogy to the true nature of the alliance formed by the Opposition Parties prior to the General Election. Without prejudice to the matters pleaded in paragraph 4 above, the defendant states that the words were uttered by the defendant during the defendant's speech which was delivered in the course of the Barisan Nasional's campaign in the 12th General Election held in Lembah Pantai Kuala Lumpur on or about 20th February 2008;
>
> (ii) The impugned words were targeted to explain how the political parties known as the Democratic Action Party ("DAP"), Pan Malaysian Islamic Party ("PAS") and the People Justices Party ("PKR") which had at that time grouped together to form the informal political coalition between themselves known as "the Pakatan Rakyat" would interact between each other;
>
> (iii) The words were uttered by the defendant to explain to those present at the gathering that DAP, PAS and PKR had chosen to form the informal coalition with the aim of a common political agenda for the purposes of contesting an election to mutually benefit themselves. The thrust of the impugned words was targeted to explain the position or defendant's opinion of

this alliance and that it was not a true alliance simply because in actual fact there are no true synergy/co-operation between DAP, PAS and PKR as the political leaders of the respective parties were in the habit of playing each other out to further their respective political interests/agendas separately and that this was the norm adopted by opposition parties against the ruling coalition party at the time;

(iv) That the plaintiff's prior expressions or political promises were doubtful and inconsistent with even the possibility of betrayal of his own political allies; and

(v) The words were also uttered by the defendant to demonstrate that the Pakatan Rakyat coalition did not have the cooperation that was enjoyed by the political parties under the umbrella of the Barisan Nasional coalition Government.

12. In so far as the words complained of allege that the plaintiff was defamed in the meaning pleaded in paragraphs 5(i) to (iii) and paragraph 6(i) to (iii) in the Statement of Claim, the defendant contends that the decision of the Federal Court pleaded in paragraph 10 (i) above is relevant on the issue of the plaintiff's homosexual conduct and in so far that they are the subject matter of comments by the courts in the land they are true in substance and in fact.

13. The defendant will, if necessary, rely on section 8 of the Defamation Act 1957.

[8] The plaintiff opposed the defendant's proposed amendments to the defence, *inter alia*, on the following reasons:

(a) The defendant has failed to state the meaning he seeks to justify in the proposed amendments;

(b) The purported particulars in para. 11(i) to (v) do not amount to facts which support the allegation that the impugned words are true as required by O. 78 r. 3(2) of the Rules of Court 2012;

(c) The proposed plea of 'partial justification' in para. 12 is wrong, improper and inapplicable as the words which the plaintiff complains of refer only to one charge and not several charges; and

(d) The delay in making the application.

Principles Governing Amendments

[9] The principles governing amendments to pleadings are found in O. 20 r. 5 of the Rules of Court 2012 and as elaborated in the case of *Yamaha Motor Co Ltd v. Yamaha (M) Sdn Bhd & Ors* [1983] 1 CLJ 191; [1983] CLJ (Rep) 428; [1983] 1 MLJ 213. To state briefly amendments may be made at any stage of proceedings. Allowing the amendments is entirely at the discretion

of the court. The general principle is that the court will allow such amendments that will not cause injustice to the other party; and if there is prejudice whether the prejudice caused to the other side can be compensated by cost. The court also will have to consider whether the amendments would not in any effect turn the suit from one character into another and of inconsistent character. The court will also have to consider whether the application to amend is made *bona fide*. Bearing in mind these principles, we will now consider the submissions by the parties.

Submissions By Appellant/Defendant

[10] Firstly, the defendant submitted that the amendments are proper and in accordance with the law. It was submitted that it was misconceived for the plaintiff to argue that the proposed amendments are not in accordance with O. 78 r. 3(2) of the Rules of Court 2012. This is because the particulars of justification that has been furnished in para. 11 of the proposed amended defence includes the meaning which the defendant ascribed the words that are complained of. The proposed amendments in the said para. 11 are not merely narratives of the events but it also rendered "the lesser meaning" which the defendant attributed to the impugned words. This, according to learned counsel for the defendant can be seen from para. 11(iv) and (v) of the proposed amended defence by the defendant. It was submitted that even if the court found that the particulars given were inadequate or non existence to render "the lesser meaning". The High Court should not dismiss the application to amend but allow the application, giving the defendant a chance to make the proposed amendments on condition that the particulars were said to be lacking are pleaded in the amended defence that is ultimately filed in respect of the action.

[11] It was further submitted by learned counsel for the defendant that the High Court was wrong to rule that the proposed amended plea of partial justification should not be allowed because there was only one meaning that have been attributed by the plaintiff in the statement of claim. It was argued that reading the whole statement of claim by the plaintiff it is clear that there was more than one meaning attributed by the plaintiff to the alleged defamatory statement by the defendant. The defendant contended that the statement of claim by the plaintiff is capable of the following distinct meanings: (a) the plaintiff facing charges on homosexual conduct or activity; (b) questioning the plaintiff's suitability to hold political office; (c) the plaintiff has criminal tendencies; and (d) the plaintiff was dangerous to Malaysian society. It was submitted that the proposed amendments were to introduce the issue of the ratio and observation of the Court of Appeal and the Federal Court in the case of *Dato' Seri Anwar Ibrahim v. PP & Another Appeal* [2004] 3 CLJ 737 as to the plaintiff's character as being cogent evidence that the plaintiff had a general reputation for being homosexual in mitigation of damages for libel. It was argued that this evidence should be admissible. It was further argued that the observation made by the Federal

Court was not irrelevant and formed part of the considered judgment. This is because the plaintiff had taken out a separate proceeding to have a particular observation by the Federal Court in the said judgment struck out from the judgment. But the plaintiff failed.

[12] With regard to the proposed amendments to the defendant's statement of defence to include the conviction of the plaintiff for sodomy by the Court of Appeal which reversed the order of acquittal by the High Court on appeal by the Public Prosecutor to the Court of Appeal; and which conviction was affirmed by the Federal Court resulting in the plaintiff being sentenced to five years imprisonment, it was submitted that this fact of conviction was not in evidence at the time when the application to amend the statement of defence was filed by the defendant in the High Court. It was submitted that this amendment should be allowed to support the defendant's defence of full and partial justification on the basis of that conviction. It was further submitted that this court has wide powers and in fact all the powers of the High Court Judge at the time of hearing of the application to amend, to allow this amendment by virtue of s. 24A and s. 67 of the Courts of Judicature Act 1964, without the need for the defendant to make further application before the High Court.

[13] With regard to the issue of delay, learned counsel for the defendant submitted that the application to amend is *bona fide*. Furthermore, the purpose is not to derail the proceeding but to put all the material facts before the court. In any event it was submitted that if there is prejudice or hardship caused to the plaintiff by the amendments, the plaintiff can be compensated by cost for the hardship or the prejudice. It was also argued that the delay in this case is insufficient ground in itself to refuse leave to amend unless there is hardship or prejudice caused to the plaintiff, which the defendant submitted there was none. It was pointed out to us that the application for the amendments had been made months before the date fixed for trial. Citing the case of *Wright Norman & Anor v. Oversea-Chinese Banking Corp Ltd* [1994] 1 SLR 513, learned counsel for the defendant submitted that justice in this case demand that the proposed amendments be allowed and that pleading must not be used as a means to punish a party for his errors or the errors of the solicitors. Without the amendments, it is said that the true facts underlying the issues between the parties would not be properly put before the court.

Respondent/Plaintiff's Submission

[14] Learned counsel for the plaintiff submitted that to plead justification, the defendant must state clearly and precisely the meaning or meanings the defendant attributed to the impugned defamatory words without obfuscation. To support this proposition, learned counsel referred to *Morrell v. International Thomson Publishing* [1989] 3 All ER 733. It was further submitted that if the defendant disagrees with the meaning of the impugned words prescribed by the plaintiff, the defendant may give an alternative

defamatory meaning and give particulars to justify that meaning. This is known as "the Lucas-Box" meaning. This concept is taken from the case of the English Court of Appeal in *Lucas-Box v. News Group Newspapers Ltd* [1986] 1 All ER 177, where the English Court of Appeal said that:

> A defendant in defamation proceedings who wishes to rely on a plea of justification must make clear in the particulars of justification the case which he is seeking to set up and must accordingly state clearly and explicitly the meaning which he seeks to justify.

[15] In another case *Stephen Foley & 2 Ors v. Lord Ashcroft KCMG* [2012] EWCA Civ 423, the English Court of Appeal also refused to allow the proposed amendments to the defence of justification which were insufficiently clear and imprecise. In *Elaine Chase v. News Group Newspapers Ltd* [2002] EWCA Civ 1772, the court said that if the particulars pleaded to justify the meaning prescribed to the alleged defamatory words ascribed by the defendant seeking to justify the meaning are not clear then the situation must be made unequivocally clear. In other words, the defendant in such situation must then give proper particulars of the facts on which the defendant relies to justify that meaning.

[16] The Lucas-Box principle was accepted and applied by the Malaysian Court in *Mirzan Mahathir v. Star Papyrus Sdn Bhd* [2000] 5 CLJ 507; [2000] 6 MLJ 29. Therefore it was submitted that the case-law authorities are clear that for a plea of justification, if the defendant contends the impugned words bear a different meaning from that ascribed by the plaintiff, it is for the defendant to state clearly and precisely the meaning that the defendant's contend, then provide particulars of facts that support that meaning.

[17] It was submitted by learned counsel for the plaintiff that the proposed amendments to the defence by the defendant do not state the meaning prescribed to the impugned words at the start of the proposed amended plea. It was argued that in para. 10 of the proposed amended defence by the defendant, the defendant pleads that the impugned words in the plaintiff's meaning are substantially true. But the defendant does not state an alternative meaning to justify his pleaded case that the impugned words carry a lesser or lower defamatory meaning. It was further argued that paras. 8 and 9 of the proposed amended defence are mere particulars and have not stated any alternative defamatory meanings in paras. 10 and 11 of the same. Therefore it was submitted that the defendant had failed to comply with the requirement of O. 78 r. 3(2) of the Rules of Court 2012 which provides that:

> (2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

[18] It was submitted that the particulars pleaded in para. 11(i) to (iv) of the proposed amended defence are wholly unsatisfactory. The particulars are not statement of facts but merely an explanation by the defendant and his opinion of the opposition parties which are unsupported by facts. It was argued that the defendant in giving the particulars has not identified any wrongful act which the plaintiff is alleged to have committed and the facts which he relies on to show the truth of his alleged defamatory imputation. It was submitted that it is pertinent for the defendant to be precise and clear in giving his particulars so that the plaintiff is not taken by surprise at the trial and the issues for trial can be clearly defined and limited. Learned counsel for the plaintiff cited the case of *Lee Kuan Yew v. Chin Vui Khen & Anor* [1989] 1 LNS 190; [1991] 3 MLJ 494, where the court held that a defendant who pleaded justification must state some specific acts and instances of misconduct imputed to the plaintiff supported by precise particulars of fact as tending to show the truth of such misconduct. In that case the court struck out the relevant paragraphs of the defence because the particulars supplied by the defendant are too general as to embarrass the plaintiff.

[19] Learned counsel for the plaintiff submitted that in paras. 12 and 13 of the proposed amended defence, the defendant seeks to introduce an additional plea of partial justification. The proposed amendments in para. 12 13 and of the proposed amended defence reads as follows:

> 12. In so far as the words complained of allege that the plaintiff was defamed in the meaning pleaded in paragraph 5(i) to (iii) and paragraph 6(i) to (iii) in the Statement of Claim, the Defendant contends that the decision of the Federal Court pleaded in paragraph 10(i) above is relevant on the issue of the plaintiff's homosexual conduct and in so far that they are the subject matter of comments by the court in the land they are true in substance and in fact.
>
> 13. The Defendant will if necessary, rely on section 8 of the Defamation Act, 1957.

[20] It was contended that a plea of partial justification is applicable only in a situation where the claimant complains of several defamatory allegations or charges contained in an impugned publication in which case a defendant could succeed if the defendant proves part of the libel is true. However in this case the plaintiff is complaining only of one defamatory allegation ie, "Anwar main dua-dua ikut belakang". The plaintiff is not making a complaint of a number of separate and different defamatory allegations or charges which conveys separate distinct imputations. It was submitted that the sting of the libel in the present case is that the plaintiff is a homosexual and is therefore unfit for public office.

[21] Learned counsel for the plaintiff also submitted that the defendant's reliance on s. 43 of the Evidence Act 1950 to bring in as a defence the observation by the Federal Court which may point to the involvement of the plaintiff in homosexual activities to support the defence of justification is contrary to law. It was argued that based on the authorities a conviction in a criminal proceedings is no evidence in civil proceedings. (See *She Eng Gek v. DA De Silva* [1956] 1 LNS 113; [1957] 23 MLJ 55, *Ong Tua Chor v. Lee Beng Tong* [1975] 1 LNS 116; [1976] 1 MLJ 187, *DP Vijandran v. Karpal Singh & Ors* [2000] 6 CLJ 433; [2000] 3 MLJ 22, *PP v. Dato' Seri Anwar Ibrahim* [2014] 1 CLJ 354; (Criminal Appeal No: W-05-19-01-2012). Learned counsel for the plaintiff pointed out that the conviction of the plaintiff in 2014 is a subsequent event, some six years after the publication of the libel. Evidence of alleged bad reputation must be confined to the character of the plaintiff prior to or at the time of publication of libel, it was argued.

[22] As to the issue of delay in making the application for amendment, the plaintiff submitted that the defendant took some three years after the original defence was filed to make the application. The original defence was filed on 8 October 2010. The application for the amendment, the subject matter of this appeal, was made some time in 2013. Though the defendant counsel had intimated to the learned High Court Judge an intention to amend the defence since December 2011, no steps were taken by the defendant to file the application then. This resulted in the court issuing on 13 August 2012 an order precluding the appellant from defending the action. This order was issued when the court was satisfied that the defendant had failed to comply with the court's direction given during case management and also an unless order issued by the court (probably with regards to the filing of the application to amend the statement of defence). Another reason given by the plaintiff as to why the amendment hence this appeal should not be allowed is because no explanation was provided by the defendant in his affidavit to explain the delay and as to why no application to amend the defence was filed between December 2011 and August 2012. It was also pointed out that the defendant and his solicitors knew full well that the trial had been set down for 28 and 29 November 2013. It was submitted that if the application to amend were allowed at this late stage, the plaintiff will be greatly prejudiced. (See *Stadco Sdn Bhd v. Woolley Development Sdn Bhd* [2013] 1 LNS 483; [2013] 6 MLJ 297 and *Raphael Pura v. Insas Bhd & Anor* [2000] 4 CLJ 830; [2001] 1 MLJ 49).

Our Opinions

[23] The issue in this appeal is whether the proposed amendments to the defence by the defendant have met the requirements stated in *Yamaha Motor (supra)* case in particular whether the amendment will be prejudicial to the plaintiff and whether the amendment to introduce the defence of partial justification has complied with the Lucas Box principle.

[24] The purpose of the proposed amendments was made clear by learned counsel for the defendant in the preliminaries of his written submission when he said the following:

> This is Appellant's appeal ('Defendant's application') to amend his Defence to include and to expand on the Defence of justification that has already been pleaded.
>
> The essence of the amendment in this particular instance is to place before this Honourable court the Defendant's version (which is what the defendant is legally entitled to do) of what the words allegedly published by the Defendant (where such publication is denied) meant which are different from the meanings that the plaintiff in this case has ascribed to them. The Defendant through the amendment intends to prove at the material time of the trial of this action that the Defendant's alternative meaning and/or lesser meaning is true.

[25] In addressing this issue we are mindful of the principles governing amendments as laid down in *Yamaha Motor* case and, with regard to the amendment to introduce partial justification we have kept in the forefront of our mind the Lucas Box principle.

[26] Whilst the defendant is not and cannot be restricted from seeking to justify the meanings or meanings attributed to the impugned words by the plaintiff, and that the defendant may give a Lucas Box meaning to the impugned words or meanings which are different from that alleged by the plaintiff as correctly held by the learned judge, the meanings which the defendant ascribed to the impugned words must be clear and precise. The defendant must also plead the particulars that will support the meanings that he ascribed to the impugned words. In this instant case, the plaintiff has alleged that words uttered and published by the defendant bear the meaning that the plaintiff is a homosexual.

[27] The learned judge had grabbed this issue by the horns when she said in her judgment as follows:

> 34. The question arises, has the Defendant in his proposed amended defence given an alternative meaning to the words that the Plaintiff complains of. In my view, the Plaintiff's complaint is justified. A perusal of the particulars in the proposed amended defence, does not indicate with any clarity the alternative meaning that the Defendant is relying on. In paragraph 11 of the Proposed Amended Defence, the Defendant pleads that "the impugned words carry a lesser/lower defamatory meaning which are as follows:" It is true that particulars are set out, however, there is a glaring omission to state explicitly what is the lesser/lower defamatory meaning that the Defendant seeks to justify. When the Defendant's counsel was asked to explain what is the alternative meaning that the Defendant intended to rely upon at the trial, I did not find his answer helpful either.

A **Principles Governing The Defence Of Justification**

[28] The Lucas Box principle was formulated by the English Court of Appeal in the well known case of *Lucas-Box v. News Group Newspapers Ltd* [1986] 1 All ER 177. It was held that in a defamation action, a defendant who does not agree with the meaning of the words about which the plaintiff
B makes of the impugned words, is entitled to give an alternative meaning and give particulars to justify that meaning. This is known as "the Lucas-Box" meaning. Ackner LJ explained (at 181) that:

> It is axiomatic that the function of pleadings is to define the issues between the parties, so that both the plaintiff and the defendant know
C what is the other side's case and thus everyone, counsel, judge and jury, are able to focus on the real nature of the dispute. Although to some it may seem a startling observation, we can see no reason why libel litigation should be immune from ordinary pleading rules. During the last dozen or so years, as a result of the views expressed by Lord Hodson and Lord
D Devlin in *Lewis v. Daily Telegraph Ltd* [1963] 2 All ER 151 at 166, 171-172, [1964] AC 234 at 273, 281-282, and adopted by this court in *Allsop v. Church of England Newspaper Ltd* [1972] 2 All ER 26 at 28-29, [1972] 2 QB 161 at 166-167 and *DDSA Pharmaceuticals Ltd v. Times Newspaper Ltd* [1972] 3 All ER 417, [1973] QB 21, it has become the settled practice for a plaintiff, where the meaning of the words complained of is not clear and explicit,
E to plead the meanings which he says the words bear. This enables the defendant to know what case he has to meet and to prepare his defence accordingly. Such a practice is, further, of considerable assistance to the court since it thus clearly provides to the trial judge the meanings on which he must rule in deciding whether the words published are capable of being so understood. The general question which has arisen in this case
F is the reverse of the coin, namely whether a defendant who pleads justification must state the meaning which he seeks to justify.

And Ackner LJ continued (at 183):

> However, we would go even further and say that, whatever may have been the practice to date, in future a defendant who is relying on a plea
G of justification must make it clear to the plaintiff what is the case which he is seeking to set up. The particulars themselves may make this quite clear, but if they are ambiguous then the situation must be made unequivocal.

[29] The Lucas Box principle was followed in *Elaine Chase v. News Group*
H *Newspapers Ltd* [2002] EWCA Civ 1772 and *Mirzan Mahathir v. Star Papyrus Sdn Bhd* [2000] 5 CLJ 507; [2000] 6 MLJ 29. The principle in these cases, make it abundantly clear that what is required for a plea of justification if the defendant contends the words bear a different meaning from that ascribed by the plaintiff, is to state with sufficient precision the meaning he contends and
I then provide particulars of facts that support that meaning. It is imperative that the meaning be pleaded with clarity so that a plaintiff knows what case he has to meet and the meaning which the defendant seeks to attribute to the words complained of.

[30] As before the learned High Court Judge, the defendant here before us is also evasive and did not provide any clear answer when asked as to what meaning did the defendant attribute to the impugned statement with regard to the character or standing of the plaintiff. On the authorities cited by the counsel for the plaintiff which we have referred above it is crucial for the defendant to be clear and precise as to the meaning that he attributed to the impugned statement which is different from the meaning understood by the plaintiff.

[31] The defendant could have avoided the hassle of this appeal had the defendant ascribed the meaning to the impugned statement which is other than the meaning imputed to the plaintiff that the plaintiff is a homosexual and therefore unfit to hold public office. Such an act would have assisted the plaintiff to respond accordingly in their reply to the defence filed. However the defendant had refused to do so. Instead the defendant went on a frolic of his own by stating all the particulars in proposed amended defence, particulars of which are not exactly helpful to the plaintiff to understand the exact alternative meaning which the defendant had attributed to the impugned statement. In fact those particulars do not at all explain the meaning or meanings which the defendant claimed he had ascribed to the impugned statement which is different from the meaning understood by the plaintiff.

[32] As such, in our view the defendant has not ascribed in clear and precise terms the alternative meaning of the impugned statement that he imputed to the plaintiff other than the meaning understood by the plaintiff. In our view, the particulars which the defendant provided in para. 11(i) to (v) of the proposed amended defence do not meet the requirements of O. 78 r. 3(2) of the ROC 2012.

[33] In our respectful view, it is fatal for the defendant in not complying with O. 78 r. 3(2) of the ROC 2012. The case of *Lee Kuan Yew v. Chin Vui Khen & Anor (supra)* cited by the plaintiff is an authority to support this proposition. With regard to this point of the appeal we are in agreement with the learned High Court Judge that the particulars pleaded in para. 11(i) to (v) of the proposed amended defence are not statement of facts but a narrative of the defendant's view and opinions about the opposition parties of which the plaintiff is the *de facto* leader; the opposition parties are not parties to this appeal or the proceedings before the High Court.

[34] Related to the issue raised by the defendant that the particulars pleaded are sufficient and provide the basis to justify a lesser meaning ascribed by the defendant to the impugned statement is the argument by the defendant that he could raise a plea of partial justification as evident in paras. 12 and 13 of the proposed amended defence. In this regard, it is pertinent to remember that the words or statements complained of by the plaintiff are that: "Anwar main dua-dua ikut belakang". In plain and ordinary meaning of the Malay language as understood by ordinary and reasonable Malaysian (whether he

A is a Malay or not) the words refer to only one act that is, in the context of which the words were said or uttered, the act of homosexuality. Therefore whilst s. 8 of the Defamation Act 1957 which reads:

> 8. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall
B not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

allows the defendant to avail himself to the defence of justification if one of the charges, if not all the charges, is proven to be true, the claim by the
C plaintiff in this case is only related to one charge that is the plaintiff is said to be homosexual or possesses the propensity to indulge in such act. Section 8 of the Act speaks of more than one charge in an impugned statement. This is clear from the language used in that section which reads '... a defence of justification shall not fail by reason only that the truth of
D every charge is not proved ...'. In the present appeal the complaint by the plaintiff is only in respect of one charge - homosexuality. The learned High Court Judge had referred to the English Court of Appeal case of *Polly Peck (Holdings) PLC & Others v. Trelford & Others* [1986] 2 All ER 84 where the Court had to consider the scope and effect of s. 5 of the English Defamation
E Act which is in *pari materia* with s. 8 of our Act. There it was held that the section applied only where specific words of which the plaintiffs complained contained two or more distinct charges. In that case neither the plaintiffs nor defendants contended that the words of which the plaintiffs complained contained two or more distinct charges; therefore s. 5 did not apply, and the fact that the impugned article (in that case) as whole contained more than one
F charge was irrelevant. The same argument in the appeal before us is applicable and valid. Here, as found by the learned judge the plaintiff is complaining only of one defamatory meaning of the statement which is sued upon. The statement does not allude to two or more different defamatory statements. We agree with this finding and therefore the defendant's
G argument that he can rely on s. 8 of the Act to justify the amendment of partial justification is misconceived.

[35] Next, the defendant argued that he is entitled to raise the proposed defences in the proposed amended statement of claim and in particular to rely on the Federal Court judgment of 2004 (*Dato' Seri Anwar Ibrahim v. PP &*
H *Another Appeal* [2004] 3 CLJ 737) in which the plaintiff was, on appeal to the Federal Court, acquitted of a charge of sodomy; but the Federal Court made a finding of fact on the evidence that the appellant was involved in a homosexual activities. That finding is encapsulated in the passage in the judgment of the court at p. 788 which reads:

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> To summarise our judgment, even though reading the appeal record, we find evidence to confirm that the appellants were involved in a homosexual activities and we are more inclined to believe that the alleged incident at Tivoli Villa did happen, sometimes ...

[36] The plaintiff argued that reliance on the plaintiff's alleged homosexual conduct in the Federal Court decision referred to above is impermissible and contrary to the clear terms of s. 43 of the Evidence Act 1950. That section reads: "Judgments, orders, decrees other than those mentioned in ss. 40, 41 and 42 are irrelevant unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this Act". In support of this argument the plaintiff relied on *Jusoh v. Ng Ah Sooi & Anor* [1963] 1 LNS 49; [1963] 29 MLJ 92 and the Court of Appeal case (Unreported) of *Dato' Seri Anwar Ibrahim v. Abdul Khalid @ Khalid Jafri Bakar Shah & Anor* (W-02-741-2000). The learned High Court Judge accepted the plaintiff's submission and rejected the defendant's contention. In our view the learned High Court Judge was correct. Section 43 Evidence Act 1950 is crystal clear. Judgments which do not come within the ambit of ss. 40, 41 and 42 of the Evidence Act are irrelevant unless the existence of the judgments is in issue. In this case the judgment of the Federal Court which the defendant is relying on for the above passage in the judgment is not in issue. The judgment is there but the plaintiff was never convicted under the said judgment. In this appeal the issue is not about the guilt or otherwise of the plaintiff's involvement in the alleged homosexual activities; but whether or not the impugned words or statement are defamatory of the plaintiff. Given that in the passage in the Federal Court judgment relied on by the defendant, the Federal Court had made finding of fact that there were evidence that the appellants there (one of whom was the plaintiff) was involved in homosexual activities, one must remember that there is no presumption that a prior judgment is the correct decision on the matter; and that there is nothing in the Evidence Act 1950 to warrant the conclusion that the statements or finding of fact in another case can be used as evidence in a subsequent case to decide the points which are in issue in the subsequent case - see *DP Vijandran v. Karpal Singh & Ors* [2000] 6 CLJ 433; [2000] 3 MLJ 22. Furthermore, the Federal Court case was not between the same parties as in this appeal, not to say the least that the passage by the Federal Court is highly prejudicial to the plaintiff who was acquitted by the Federal Court on the charge. It is immaterial whether the plaintiff was subsequently convicted of another charge of sodomy which charge and conviction was found well after the defendant had made the impugned statement; and which charge and conviction was not in any way related to the first charge on which the plaintiff was acquitted by the Federal Court.

[37] Finally, we will address learned counsel for the defendant's argument that the correct judicial approach is not to dismiss the application to amend but to allow it giving the defendant a chance to make the proposed amendments on the condition that the particulars that were said to be lacking are pleaded in the amended defence that is ultimately filed in respect of the application. We appreciate the general rule with regard to amendment, that is, the court should lean towards allowing amendments to be made to the pleadings to make them clear and to put before the court all the material facts

A on the issue or issues that require the court's determination. However the court's discretion to do so must be exercised judiciously. The court must be satisfied that the proposed amendments have passed all the legal requirements and are not prejudicial to the party against whom the amendments are to be made. In other words the court must also consider the B materiality and effectiveness of the amendments - see *Ponnusamy & Anor v. Nathu Ram* [1959] 1 LNS 73; [1959] MLJ 228 and *HSBC Bank Malaysia Bhd v. Macquarie Technologies (Malaysia) Sdn Bhd & Another Appeal* [2004] 3 CLJ 121; [2004] 4 MLJ 398 referred to by the learned High Court Judge in her written judgment. In the present appeal the proposed amendments by the C defendant is to put in a defence of partial justification or to attribute a lesser meaning to the impugned words or statement which the plaintiff claimed to be defamatory of him. The defendant however was and is not forthcoming in stating clearly and precisely the lesser meaning which he ascribed to the impugned words attributed to the plaintiff. The particulars pleaded in the proposed amendments also do not give any indication of what is the lesser D meaning that was attributed to the impugned words or statement that being sued upon by the plaintiff. Thus the plaintiff is prejudiced and would be left groping for the meaning or meanings which the defendant sought to give to the impugned words in order to put up a response to the proposed amended defence when the words or statement complained of points only to one E charge. It must not be forgotten that the defendant was given ample opportunity to amend the pleadings; but the defendant did nothing resulting in the court making an unless order to preclude the defendant from defending the case (which was later set aside on appeal). In this regard the argument that the amendments should be allowed on condition that the defendant F pleads the particulars that were lacking in the proposed amendments when the defendant eventually filed the amended defence is not tenable in the circumstances of this case. The court has the discretion to consider the proposed amendments as they stand. After all that was what was proposed by the defendant for the court to consider after more than three years had G lapsed since the defendant was given the opportunity to make the amendments. There is a clear lack of *bona fide* in the pursuit of this proposed amendments by the defendant.

[38] For the above reasons, this appeal by the appellant/defendant is dismissed with cost of RM5,000 to the respondent/plaintiff. The deposit is H refunded to the appellant/defendant.

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